

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Case No.: 2:16-cv-00847-GMN-CWH

**ORDER**

THE BANK OF NEW YORK MELLON FKA )  
THE BANK OF NEW YORK, AS TRUSTEE )  
FOR THE CERTIFICATEHOLDERS OF THE )  
CWABS, INC. ASSET-BACKED )  
CERTIFICATES, SERIES 2004-7, )

Plaintiff, )

vs. )

SFR INVESTMENTS POOL 1, LLC; )  
MONTAGNE MARRON COMMUNITY )  
ASSOCIATION; ALESSI & KOENIG, LLC, )

Defendants. )

SFR INVESTMENTS POOL 1, LLC, a )  
Nevada limited liability company )

Counter/Cross Claimant, )

vs. )

THE BANK OF NEW YORK MELLON FKA )  
THE BANK OF NEW YORK, AS TRUSTEE )  
FOR THE CERTIFICATEHOLDERS OF THE )  
CWABS, INC. ASSET-BACKED )  
CERTIFICATES, SERIES 2004-7; and JOHN )  
EDWARD BOSTAPH, JR., an individual, )

Counter/Cross  
Defendants. )

On April 18, 2018, the Court granted summary judgment to Plaintiff The Bank of New York Mellon (“Plaintiff”) because, under *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 832 F.3d 1154 (9th Cir. 2016), the Montagne Marron Community Association (“HOA”) “foreclosed under a facially unconstitutional notice scheme” and therefore the “foreclosure sale

1 cannot have extinguished” Plaintiff’s deed of trust on the property. (Order 6:10–12, ECF No.  
2 54). The Ninth Circuit has since held, however, that Nevada’s homeowner’s association  
3 foreclosure scheme is not facially unconstitutional because the decision in *Bourne Valley* was  
4 based on a construction of Nevada law that the Nevada Supreme Court has since made clear  
5 was incorrect. *See Bank of Am., N.A. v. Arlington W. Twilight Homeowners Ass’n*, 920 F.3d  
6 620, 624 (9th Cir. 2019) (recognizing that *Bourne Valley* “no longer controls the analysis” in  
7 light of *SFR Investments Pool I, LLC v. Bank of New York Mellon*, 422 P.3d 1248 (Nev. 2018)).  
8 Moreover, for orders from this district that relied on *Bourne Valley Court Trust v. Wells Fargo*  
9 *Bank, N.A.*, 832 F.3d 1154 (9th Cir. 2016), and were thereafter appealed, the Ninth Circuit  
10 recently began reversing and remanding such orders in light of *Bank of Am., N.A. v. Arlington*  
11 *W. Twilight Homeowners Ass’n*, 920 F.3d 620, 624 (9th Cir. 2019). *See, e.g., U.S. Bank, N.A. v.*  
12 *SFR Investments Pool I, LLC*, No. 18-16006, 2019 WL 6817304, at \*1 (9th Cir. Dec. 13,  
13 2019).

14 Accordingly, to preserve judicial resources,

15 **IT IS HEREBY ORDERED** that the Court’s prior Order, (ECF No. 54), is  
16 **VACATED.**

17 **IT IS FURTHER ORDERED** that the parties shall have thirty days from the date of  
18 this Order to file renewed dispositive motions.

19 The Clerk of Court shall reopen the case and deliver a copy of this Order to the United  
20 States Court of Appeals for the Ninth Circuit, Appeal Number 18-15911.

21  
22 **DATED** this 18 day of December, 2019.

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Gloria M. Navarro, District Judge  
United States District Court